

## Union Calendar No. 582

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**H. R. 3312****[Report No. 106–994, Part I]**

To clarify the Administrative Dispute Resolution Act of 1996 to authorize the Merit Systems Protection Board to establish under such Act a 3-year pilot program that will provide a voluntary early intervention alternative dispute resolution process to assist Federal agencies and employees in resolving certain personnel actions and disputes in administrative programs.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1999

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER 23, 2000

Reported from the Committee on the Judiciary with amendments

[Strike out all after the enacting clause and insert the part printed in *italic*]

OCTOBER 23, 2000

Referral to the Committee on Government Reform extended for a period ending not later than October 23, 2000

OCTOBER 23, 2000

The Committee on Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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# A BILL

To clarify the Administrative Dispute Resolution Act of 1996 to authorize the Merit Systems Protection Board to establish under such Act a 3-year pilot program that will provide a voluntary early intervention alternative dispute resolution process to assist Federal agencies and employees in resolving certain personnel actions and disputes in administrative programs.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Merit Systems Protec-*  
 5 *tion Board Administrative Dispute Resolution Act of*  
 6 *2000”.*

7 **SEC. 2. FINDINGS.**

8 *The Congress finds the following:*

9 (1) *Workplace disputes waste resources of the*  
 10 *Federal Government, take up too much time, and de-*  
 11 *flect managers and employees from their primary job*  
 12 *functions.*

13 (2) *The Merit Systems Protection Board (here-*  
 14 *after in this Act referred to as the “Board”) has al-*  
 15 *ready taken steps to encourage agency use of ADR be-*  
 16 *fore appeals are filed with the Board, including ex-*

1        *tending the regulatory time limit for filing appeals*  
2        *when the parties agree to try ADR, but high levels of*  
3        *litigation continue.*

4            (3) *The Board's administrative judges, who de-*  
5        *cide appeals from personnel actions by Federal agen-*  
6        *cies, find that by the time cases are formally filed*  
7        *with the Board, the positions of the parties have hard-*  
8        *ened, communication between the parties is difficult*  
9        *and often antagonistic, and the parties are not ame-*  
10       *nable to open discussion of alternatives to litigation.*

11           (4) *Early intervention by an outside neutral,*  
12       *after the first notice of a proposed action by an agen-*  
13       *cy but before an appeal is filed with the Board, will*  
14       *allow the parties to explore settlement outside the ad-*  
15       *versarial context. However, without the encourage-*  
16       *ment of a neutral provided without cost, agencies are*  
17       *reluctant to support an early intervention ADR pro-*  
18       *gram.*

19           (5) *A short-term pilot program allowing the*  
20       *Board, upon the joint request of the parties, to inter-*  
21       *vene early in a personnel dispute is an effective*  
22       *means to test whether ADR at that stage can resolve*  
23       *disputes, limit appeals to the Board, and reduce time*  
24       *and money expended in such matters.*

(6) *The Board is well equipped to conduct a voluntary early intervention pilot program testing the efficacy of ADR at the initial stages of a personnel dispute. The Board can provide neutrals who are already well versed in both ADR techniques and personnel law. The Board handles a diverse workload including removals, suspensions for more than 14 days, and other adverse actions, the resolution of which entails complex legal and factual questions.*

**SEC. 3. MERIT SYSTEMS PROTECTION BOARD ALTERNATIVE  
DISPUTE RESOLUTION PILOT PROGRAM.**

(a) *AMENDMENT TO CHAPTER 5 OF TITLE 5.—Chapter 5 of title 5, United States Code, is amended by adding immediately after section 584 the following:*

**“§ 585. Establishment of voluntary early intervention  
alternative dispute resolution pilot program for Federal personnel disputes**

**“(a) IN GENERAL.—**

**“(1) *The Board is authorized under section 572 to establish a 3-year pilot program to provide Federal employees and agencies with voluntary early intervention alternative dispute resolution (in this section referred to as ‘ADR’) processes to apply to certain personnel disputes. The Board shall provide ADR services, upon joint request of the parties, in matters***

1 *involving removals, suspensions for more than 14*  
2 *days, other adverse actions under section 7512, and*  
3 *removals and other actions based on unacceptable per-*  
4 *formance under section 4303.*

5 “(2) *The Board shall test and evaluate a variety*  
6 *of ADR techniques, which may include—*

7 “(A) *mediation conducted by private*  
8 *neutrals, Board staff, or neutrals from appro-*  
9 *priate Federal agencies other than the Board;*

10 “(B) *mediation through use of neutrals*  
11 *agreed upon by the parties and credentialed*  
12 *under subsection (c)(5); and*

13 “(C) *non-binding arbitration.*

14 “(b) *EARLY INTERVENTION ADR.—*

15 “(1) *AUTHORITY.—The Board is authorized to*  
16 *establish an early intervention ADR process, which*  
17 *the agency involved and employee may jointly re-*  
18 *quest, after an agency has issued a notice letter of a*  
19 *proposed action to an employee under section 4303 or*  
20 *7513 but before an appeal is filed with the Board.*

21 “(2) *NOTICE IN PERSONNEL DISPUTES.—During*  
22 *the term of the pilot program, an agency shall, in the*  
23 *notice letter of a proposed personnel action under sec-*  
24 *tion 4303 or 7513—*

1           “(A) advise the employee that early inter-  
2           vention ADR is available from the neutral  
3           Board, subject to the standards developed pursu-  
4           ant to subsection (c)(1)(A), and that the agency  
5           and employee may jointly request it; and

6           “(B) provide a description of the program,  
7           including the standards developed pursuant to  
8           subsection (c)(1)(A).

9           “(3) REQUEST.—Any agency and employee may  
10          seek early intervention ADR from the Board by filing  
11          a joint request with the Board pursuant to the pro-  
12          gram standards adopted under subsection (c)(1)(A).  
13          All personnel dispute matters appealable to the Board  
14          under section 4303 or 7513 shall be eligible for early  
15          intervention ADR, upon joint request of the parties,  
16          unless the Board determines that the matter is not  
17          appropriate for the program subject to any applicable  
18          collective bargaining agreement established under  
19          chapter 71.

20          “(4) CONFIDENTIALITY AND WITHDRAWAL.—The  
21          consent of an agency or an employee with respect to  
22          an early intervention ADR process is confidential  
23          and shall not be disclosed in any subsequent pro-  
24          ceeding. Either party may withdraw from the ADR  
25          process at any time.

1           “(5) *ANCILLARY MATTER.*—*In any personnel dis-*  
 2           *pute accepted by the Board for the ADR pilot pro-*  
 3           *gram authorized by this section, the Board may at-*  
 4           *tempt to resolve any ancillary matter which the*  
 5           *Board would be authorized to decide if the personnel*  
 6           *action were effected under section 4303 or 7513,*  
 7           *including—*

8                       “(A) *a claim of discrimination as described*  
 9                       *in section 7702(a)(1)(B);*

10                      “(B) *a prohibited personnel practice claim*  
 11                      *as described in section 2302(b); or*

12                      “(C) *a claim that the agency’s action is or*  
 13                      *would be, if effected, not in accordance with law.*

14           “(c) *IMPLEMENTATION.*—

15                      “(1) *PROGRAM DUTIES.*—*In carrying out the*  
 16                      *program under this section, the Board shall—*

17                               “(A) *develop and prescribe standards for se-*  
 18                               *lecting and handling cases in which ADR has*  
 19                               *been requested and is to be used;*

20                               “(B) *take such actions as may be necessary*  
 21                               *upon joint request of the parties, including waiv-*  
 22                               *er of all statutory, regulatory, or Board imposed*  
 23                               *adjudicatory time frames; and*

24                               “(C) *establish a time target within which it*  
 25                               *intends to complete the ADR process.*

1           “(2) *EXTENSION.*—*The Board, upon the joint re-*  
2           *quest of the parties, may extend the time period as it*  
3           *finds appropriate.*

4           “(3) *ADVOCACY AND OUTREACH.*—*The Board*  
5           *shall conduct briefings and other outreach, on a non-*  
6           *reimbursable basis, aimed at increasing awareness*  
7           *and understanding of the ADR program on the part*  
8           *of the Federal workforce—including executives, man-*  
9           *agers, and other employees.*

10          “(4) *RECRUITMENT.*—*The Chairman of the*  
11          *Board may contract on a reimbursable basis with of-*  
12          *ficials from other Federal agencies and contract with*  
13          *other contractors or temporary staff to carry out the*  
14          *provisions of this section.*

15          “(5) *TRAINING AND CREDENTIALLING OF*  
16          *NEUTRALS.*—*The Board shall develop a training and*  
17          *credentialing program to ensure that all individuals*  
18          *selected by the Board to serve as program neutrals*  
19          *have a sufficient understanding of the issues that*  
20          *arise before the Board and are sufficiently skilled in*  
21          *the practice of meditation or any other relevant form*  
22          *of ADR.*

23          “(6) *REGULATIONS.*—*The Board is authorized to*  
24          *prescribe such regulations as may be necessary to im-*  
25          *plement the ADR program established by this section.*



1 “(d) *EVALUATION.*—

2 “(1) *CRITERIA.*—*The Board’s Office of Policy*  
3 *and Evaluation shall establish criteria for evaluating*  
4 *the ADR pilot program and prepare a report con-*  
5 *taining findings and recommendations as to whether*  
6 *voluntary early intervention ADR is desirable, effec-*  
7 *tive, and appropriate for cases subject to section 4303*  
8 *or 7513.*

9 “(2) *REPORT CONTENT.*—*The report, subject to*  
10 *subsection (b)(4) and section 574, shall include—*

11 “(A) *the number of cases subject to the ADR*  
12 *program, the agencies involved, the results, and*  
13 *the resources expended;*

14 “(B) *a comprehensive analysis of the effec-*  
15 *tiveness of the program, including associated re-*  
16 *source and time savings (if any), and the effect*  
17 *on the Board’s caseload and average case proc-*  
18 *essing time;*

19 “(C) *a survey of customer satisfaction; and*

20 “(D) *a recommendation regarding the desir-*  
21 *ability of extending the ADR program beyond*  
22 *the prescribed expiration date and any rec-*  
23 *ommended changes.*

24 *The recommendation under subparagraph (D) shall*  
25 *discuss the relationship between the Board’s pilot*

1       *ADR program and those workplace ADR programs*  
2       *conducted by other Federal agencies.*

3               “(3) *REPORT DATE.*—*The report shall be sub-*  
4       *mitted to the President and the Congress 180 days be-*  
5       *fore the close of the ADR pilot program.”.*

6       *(b) APPROPRIATIONS.—*

7               *(1) IN GENERAL.*—*For the purpose of carrying*  
8       *out the ADR pilot program established by this sec-*  
9       *tion, there are authorized to be appropriated such*  
10       *sums as may be necessary for each of the 3 fiscal*  
11       *years beginning after the date of enactment of this*  
12       *Act.*

13               *(2) NO REDUCTIONS.*—*The authorization of ap-*  
14       *propriations by paragraph (1) shall not have the ef-*  
15       *fect of reducing any funds appropriated for the Board*  
16       *for the purpose of carrying out its statutory mission*  
17       *under section 1204.*

18               *(c) EFFECTIVE DATE.*—*The amendment made by sub-*  
19       *section (a) shall take effect no later than the close of the*  
20       *60th day after the enactment of appropriations authorized*  
21       *by subsection (b)(1) and shall remain in effect for 3 years*  
22       *from the effective date.*

23               *(d) CONFORMING AMENDMENT.*—*The table of sections*  
24       *for subchapter IV of chapter 5 of title 5, United States Code,*

- 1 *is amended by adding after the item relating to section 584*
- 2 *the following new item:*

*“585. Establishment of voluntary early intervention alternative dispute resolution pilot program for Federal personnel disputes.”.*

Amend the title so as to read: “A bill to clarify the Administrative Dispute Resolution Act of 1996 to authorize the Merit Systems Protection Board to establish under such Act a 3-year pilot program that will provide a voluntary early intervention alternative dispute resolution process to assist Federal agencies and employees in resolving certain personnel actions.”.

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106TH CONGRESS  
2D SESSION

**H. R. 3312**

**[Report No. 106-944, Part I]**

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## **A BILL**

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